

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

**CRIMINAL NO. 1:21CR131-LG-RHWR-1
CIVIL NO. 1:23CV83-LG**

CASEY LUKE BLACKMON

**ORDER FINDING DEFENDANT
TIMELY FILED A NOTICE OF APPEAL**

THIS MATTER IS BEFORE THE COURT on remand from the United States Court of Appeals for the Fifth Circuit for a determination: (1) whether Defendant Casey Luke Blackmon timely mailed a notice of appeal that was not received by this Court and (2) whether Blackmon has thus shown excusable neglect or good cause. The Court scheduled a hearing in this matter and ordered the parties to provide briefs concerning these issues.

In 2021, Blackmon pled guilty to one count of possession of a firearm by a prohibited person and one count of interstate travel in aid of racketeering. After the Court entered an [14] Order denying Blackmon's Motion to Withdraw his guilty plea, the Court sentenced him to a total of 140 months' imprisonment and three years of supervised release. (Judgment 18, ECF No. 18). The Court also imposed a \$4,000.00 fine and a \$100.00 special assessment. (*Id.*).

Blackmon filed a Motion seeking permission to file an out of time appeal, which this Court construed as a Section 2255 Motion. The Court ordered the Clerk of Court to provide Blackmon the appropriate forms for filing such a motion.

(Motion, ECF No. 21; Order, ECF No. 29). Blackmon then withdrew his [21] Motion for an Out of Time of Appeal, and he filed a Section 2255 Motion using the proper form. (Motion, ECF No. 31). The Court denied Blackmon's Section 2255 Motion on December 14, 2023. (Order, ECF No. 43). The Court further found that Blackmon was not entitled to a Certificate of Appealability. *See* (Denial of Certificate of Appealability, ECF No. 44).

On January 24, 2024, prior to the deadline for appealing the denial of his Section 2255 Motion, Blackmon filed a Motion for Extension of Time to File a Notice of Appeal. (Motion, ECF No. 45). The Government has candidly conceded that this Motion clearly expressed Blackmon's intention to appeal the denial of his Section 2255 Motion.¹ The Court agrees. The Court further finds that the Government has waived any argument that Blackmon did not timely file a notice of appeal. *See United States v. Martinez*, 496 F.3d 387, 388-89 (5th Cir. 2007) (per curiam).

Therefore, the Court finds that Blackmon's January 24, 2024 [45] Motion should be construed as a timely notice of appeal, and this case should be returned to the Fifth Circuit Court of Appeals for further consideration.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Casey Luke Blackmon timely expressed his intention to appeal the denial of his Section

¹ *See* Government's Submission Addressing Timeliness Of Appeal of Denial ([ECF 63]) ("...the Government regards the January 24, 2024, letter (Exhibit A) as a sufficient notice of appeal"); *See also United States v. Lafleur*, 2024 WL 2846050, at *2 n.2 (5th Cir. June 5, 2024) (unpublished per curiam).

2255 Motion when he filed a [45] Motion for Extension of Time to File a Notice of Appeal on January 24, 2024.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of Court shall return this matter to the United States Court of Appeal for the Fifth Circuit for further consideration.

SO ORDERED AND ADJUDGED this the 10th day of August, 2024.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.

UNITED STATES DISTRICT JUDGE